HIGH COURT OF UTTARANCHAL AT NAINITAL

(Courts' order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WPMS No. 119/2003

Vijay Kumar Singhal

S/o Deep Chandra.

Vs

Additional District

Judge & others

Approved for reporting.

Not approved for reporting

Date of decision 22.8.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 119 (MS) OF 2003

Vijay Kumar Singhal,
S/o Deep Chandra,
R/o 37/83, Subhash Road,
Dehradun. .....Petitioner.

Versus

1. Additional District Judge/First F.T.C., Dehradun.
2. Sri Ramswaroop, S/o Shiv Ram,
3. Charanjeet Singh,
4. Sri Vijay (Both are sons of Joga Singh),
5. Smt. Geeta Guddi, D/o Joga Singh,
   All residents are 56 /130 / 148 /166, Haridwar Road, Dehradun.

.....Respondents.

Dated: 22.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri A. Vashishtha, Advocate for the petitioner, Standing Counsel for the respondent no.1 and Sri Hari Mohan Bhatia, Advocate for the respondents no. 2 to 5..

2. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 04.02.2003 (Annexure No. 6 to the writ petition) passed by the respondent no. 1.

3. Briefly stated, a suit was filed by the petitioner being Suit No. 109 of 2001 *Vijay Kumar Singhal Vs. Ram Swaroop & others* for permanent injunction against the respondents no. 2 to 5.

4. According to the petitioner, during the pendency of the aforesaid suit, when the respondents started harassing the petitioner, he filed an application for temporary injunctions, which was numbered as 6Ga with the aforesaid plaint.

5. The trial Court after considering the case of the petitioner directed both the parties to maintain status quo

6. Thereafter, the petitioner moved an amendment application being Amendment Application No. 52 Ka..A under Order 6 Rule 17 for amending the plaint after assessing the valuation of the suit and paying the sufficient court fee seeking a relief that the illegal construction raised over the plot in dispute by the defendants be removed and possession of the property in dispute may be delivered to him. The amendment sought reads as under:

> "वाद पत्र में प्रतिवादी सं0 3 के नाम पते में श्री जोगा सिंह काट दिया जावे व उसके स्थान पर "रामस्वरूप" नाम अंकित किया जावे।
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> वाद पत्र की चरण संख्या 11 के बाद निम्न अनुसार नई चरण संख्यायें बढ़ाई जावेः–
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> "11–क यह कि वाद पत्र प्रस्तुत करने के बाद विदित हुआ है कि प्रतिवादी सं0 1 ने मा0 न्यायालय की यथा स्थिति के बावजूद बिना अधिकार, खिलाफ कानून, और जबरदस्ती वादी के वादग्रस्त संपत्ति के स्वामित्व, अध्यासन वाले भाग में गैर कानूनी निर्माण किया है और प्रतिवादी गण का तथा कथित अध्यासन का क्लेम बिना अधिकार, खिलाफ कानून व जोर

जबरदस्ती है। बाद की उलझनों से बचने के लिये यदि मा0 न्यायालय के विचार में यह पाया जावे कि प्रतिवादीगण यह उनमें से काई भी प्रतिवादी वादग्रस्त संपत्ति में अध्यासी है तो उस दशा में वादग्रस्त संपत्ति का उसमें प्रतिवादीगण द्वारा किये गये तथा कथित गैर कानूनी निर्माण को तुड़वाकर उसका वास्तविक अध्यासन प्रतिवादीगण से वादी को दियालय जाना उचित, आवश्यक व न्याय हित में है।

11– ख– यह कि वादीग्रस्त संपत्ति जिसका विवरण वाद पत्र के अंत में सूची संपत्ति में क्रम सं0 3 पर दिया गया है में प्रतिवादीगण द्वारा किये गये विधि विरूद्ध व जोर जबरदस्ती निर्माण को ध्वस्त कराकर उसका वास्तविक अध्यासन मा0 न्यायालय के माध्यम से वादी पाने का अधिकारी है।

वाद की चरण संख्या 13 में 8 वीं पंक्ति में लेख "रहने से" के बाद निम्न लेख व ढाया जावे–

"तथा वाद प्रस्तुत करने के बाद मा0 न्यायालय द्वारा यथा स्थिति आदेश पारित होने के बाद प्रतिवादीगण द्वारा वादी के वादग्रस्त संपत्ति के स्वामित्व व अध्यासन में खिलाफ कानून, और जबरदस्ती, अवैध निर्माण करने के तथा वाद ग्रस्त सम्पत्ति पर अपना अध्यासन क्लेम करने से"

वाद पत्र की चरण संख्या 14 के बाद निम्न लेख बढ़ाया जावे तथा प्रतिकार कक के लिये 10,000/– रू0 किया जाता है तथा प्रतिकार कक अध्यासन के लिये हे जिस कारण 10,000/– रू0 पर नियमानुसार न्याय शुल्क अदा किया जा रहा है विवादित संपत्ति पर जो गैर कानूनी निर्माण है वह प्रतिवादीगण का है और प्रतिवादीगण उसे हटाने को स्वतन्त्र है और उस पर कोई न्यायालय शुल्क देय नहीं हैं

वाद पत्र में प्रतिकार चरण में प्रतिकार "कक" निम्न अनुसार बढ़ाया जावे–

"कक– वादग्रस्त संपत्ति जिसका पूरा विवरण इस वाद पत्र के अंत में सूची संपत्ति में क्रम

सं0 3 पर दिया गया है और कि जो वाद पत्र में संलग्न मानचित्र में नीले रंग से घेर कर दर्शाया गया है में प्रतिवादीगण द्वारा किये गये अवैध निर्माण को तुड़वा कर उसका वास्तविक अध्यासन वादी को दिलवाया जावे और यदि प्रतिवादीगण अपना अवैध निर्माण न हटावे तो मय निर्माण के उसका वास्तविक अध्यासन वादी को दिलाया जावे।"

वाद पत्र की चरण संख्या 5 में 5वीं पंक्ति में लेख "बीघा" काटकर उसके स्थान पर "एकड़" लिखा जावे।"

8. Against the aforesaid amendment application, the defendant no.1 filed his objection along with an affidavit.

9. The trial Court after considering the case of the petitioner on 17.08.2001 allowed the amendment applcation filed by the petitioner.

10. Aggrieved by the order dated 17.08.2001, the defendant no. 1 moved a revision being Revision No. 265 of 2001 *Sri Ram Swaroop Vs. Sri Vijay Kumar Singhal and others* before the District Judge, Dehradun, which was later on transferred before the respondnet no. 1. The same was allowed on 04.02.2003.

11. Aggrieved by the order dated 04.02.2003 present writ petition has been filed by the petitioner.

12. Counsel for the petitioner has referred ***Sri Prabhakar Uniyal and others Vs. Smt. Chinta Devi and others 2006 (2) U.D., 90*** where relying upon various judgments, this Court has bserved as under:

"*In* ***B.K. Narayana Pilai Vs. Parameshwaran Pillai and another (2000) 1 SCC 712,*** it has been observed as under:-

> "*The principles applicable to; the amendments of the plain are equally applicable to the amendments of the written statements. The Courts are more generous in allowing the amendment of the written statement as the question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed shich amounts to or relates (sic results) in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition for amendment of the pleadings*

should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement."

On the other hand, the respondents have relied upon the judgment of ***Ali Hasan Vs. Deputy Director of Consolidation 2005 (2) U.D., 701*** and ***Surendra Pal Singh Vs. Jitendra Pal Singh and another 2005 (2) U.D., 390,*** *where it has been held that by allowing the amendment no rights are accrued to the parties.*

In the case of ***Ali Hasan Vs. Deputy Director of Consolidation 2005(2) U.D., 701*** *it has been observed as under:-*

"14. It is well settled that by allowing the amendment, no party can get any right and only it is left to the court to decide the dispute in accordance with the pleadings of the parties in view of the law laid down by the Allahabad High Court in Mahesh Narain Shukla Vs. Ram Kishore 1979 (U.P.) R.C.C. Page 213. The relevant observations are quoted below:-

"It is also settled that while deciding an application for amendment, a court is not entitled to consider the truth or falsity of a statement through the amendment. If an amendment is false, the plaintiff will fail in the suit. As such, the court below was wrong in examining the merits of the amendment and rejecting the same on that ground."

15. In the case of ***B.K.N. Pillai Vs. P. Pillai and another 2000 938) ALR S.C. Page 338,*** *the Apex Court has observed as under:-*

> *"The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in thue interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt hyper technical approach. Liberal approach shuld be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation."*
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> *16. The amendment has been refused only on the technical ground. The law regarding amendment is very much clear as has been held in M/s Estrella Rubber Vs. Dass Estate 2001 (3) Civil Court Cases 663 (S.C) after relying upon the judgment of B.K. Pillai v. Parameshwaran Pillai and another (2000) 1 SCC 712. The apex courts has observed as under:-*
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> > *"The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his*

pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But is equally true that the courts while deciding such prayers should not adopt a hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation."

In ***Surendra Pal Singh Vs. Jitendra Singh and others 2005 (2) U.D., 390,*** *it has been observed by this Court as under:-*

"15. The expression 'cause of action' has also been interpreted in the case of B.K. Narayan Pillai (supra) where the apex Court after referring the judgment of Cooke vs. Gill (1873) 8 CP 107 has held that the expression 'cause of action' in the present contest does not mean 'every fact which is material to be proved to entitle the plaintiff to succeed'. The relevant observations of the apex court are as under:-

The expression 'cause of action' in the present context does not mean 'every fact which it is material to be proved to entitle the plaintiff to

succeed' as was said in Cooke v. Gill in a different contxt, for if it were so, no material fact could every be amended or added and, of course no one would want to change or add an immaterial allegation by amendment. The expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in Robinson v. Unicos Property Corpn. Ltd. and it seems to us to be the only possible view tot ake. Any other view would made the rule futile. The words 'new case' have been understood to mean 'new set of ideas' Dornan v. J.W. Ellis and Co. Ltd.; his also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."

16. The trial Court shall examine the amendment in order to do substantial justice between the parties as well as for the purpose of determining the real question in controversy between the parties. The amendment sought by the plaintiff has to be considered by the trial Court in the light of the fact as tot whether by way of amendment cause of action is not going to be changed. If the cause of action remains the same by way of amendment, the court will be able to decide all the controversies involved in the suit so as to avoid the multiplicity of the proceedings. The intention of the legislature by incorporating Order 6 Rule 17 of the Code of Civil Procedure is not to penalize the litigant for the fault of the

pleader of the plaintiff but to extend the aid to resole the dispute forever. Thus the technicalities of law should not be allowed to come in the way of substantial justice to the parties, which will minimize the litigation other than the complications."

In ***Muni Lal v. Oriental Fire and General Insurance Co. Ltd., AIR 1996 SC 642,*** *the Hon'ble Apex Court held that the relief of amendment should be granted to "render substantial justice without causing injustice to the other party or violating fair-play and the Court should be entitled to grant proper relief even at the stage of appellate forum." Similar view has been reiterated in* ***Jagdish Singh v. Nathu Singh, AIR 1992 SC 1604.***

In ***Smt. Ganga Bai v. Vijay Kumar, AIR 1974 SC 1126,*** the Hon'ble Supreme Court observed as under:-

"The power to allow an amendment is undoubtedly wide and may, at any stage, be properly exercised in the interest of justice, the law of limitation notwithstanding, but the exercise of such far-reaching discretionary power is governed by judicial consideration and wider the discretion greater ought to be the care and circumspection on the part of the Court."

In ***M/s Ganesh Trading Co. V. Maoji Ram, AIR 1978 SC 484,*** *the Hon'ble Supreme Court observed that where amendment is found to be necessary for promoting the neds of justice and not for defeating it, the application should be allowed. Similar view had been reiterated in* ***B.K.N. Pillai v. P. Pillai***

and another, AIR 2000 SC 614 : 2000 SCFBRC 32.

In ***Laxmidas Dahyabhai Kabarwala v. Nanabhai Chunilal Kabarwala, AIR 1964 SC 11,*** *the Hon'ble Supreme Court observed as under:-*

> *"It is true that save in exceptional cases, leave to amend under Order VI, Rule 17 of the Code will ordinarily be refused when the effect of the amendment would be t take away from a party a legal right which had accrued to him by lapse of time. But this rule can apply only when either fresh allegations added or fresh relief sought by way of amendment. Where, for instance, an amendment is sought which merely clarified an existing pleading and does not in substance add to or alter it, it has never been held that the question of a bar of limitation of a matter already contained in the original pleading. The present is a fortioti so."*

In ***Ramesh Kuamr v. Kesho Ram, AIR 1992 SC 700 : 1992 SCFBRC 322,*** *the Hon'bel Supreme Court observed as under:-*

> *"The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspect which bear on the moulding of the relief occur the Court is not precluded form taking a 'cautious*

cognizance' of the subsequent changes of the fact and law to mould the relief."

Similar view has been reiterated by the Hon'ble Supreme Court in ***Kameshwar Prasad v. Prademanju Agarwal, AIR 1997 SC 2399 : 1997 SCFBRC 274.***

In ***Sampath Kumar v. Ayyakannu and another, AIR 2002 SC 3369*** *the Hon'ble Supreme court held that amendment of pleadings is permissible even if the version of a suit for permanent injunction into a suit for declaration for title and recovery of possession is said to be changed for the reason that it would violate multiplicity of litigation, and in case where an independent suit is maintainable, there is no reason as to why same relief cannot be sought by an amendment in the plaint. In order to curtail the multiplicity of the legal proceedings, amendment should be allowed While deciding the said case, the Hon'ble Supreme Court placed reliance upon its earlier judgments in* ***Mst. Rukhmaal v. Lala Laxminarayan and others, AIR 1960 Sc 335,*** and ***Siddaligamma and another, v. Mamtha Shenoy, (2001) 8 SCC 561 : 2002 SCFBRC 17.*** *The Hon'ble Supreme Court further held that the such an application should be allowed even if it is filed at a belated stage. The Supreme Court further held that it is not permissible for the trial Corut to examine the correctness or genuineness of the contents of the application at the time of entertainment stage in such an application, observing as under:-*

"The plaintiff has alleged the cause of action for the reliefs now sought to be added as having

arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment."

Thus in view of the above, the amendment of the pleadings should ordinarily be allowed if the amendment is found to be necessary for just and proper decision of the controversy, if it does not alter the nature of the suit or takes away the accrued right of the parties.

13. Further the petitioner has referred ***Saraft Vs. Additional District Judge, IIIrd Fast Track Court, Hardwar and others 2006(1) U.D., 337***, where this Court has observed as under:

"4. The law on the amendment is well settled as will appear from the various decisions of the Apex Court. In view of the above, the court below directed to consider the observation made in the case of B.K. Narayan Pillai Vs. Parameshwaran Pillai and another (2001) 2 SCC 472 and Judgment in Civil Revision No. 103 of 2001 Bachan Lal Vs. State of Uttaranchal 2003 U.D., 513 in order to find out the criteria for deciding the amendment application. The observation in Bachan Lal Vs. State of Uttaranchal (2003 U.D., 513) is quoted below:

"It is a settled law that at the time of allowing of amendment, the Court has only to lloi as to whether the ingredients of Order VI Rule 17 are satisfied or not. Rule 176 is very much clear it provides that amendment can be allowed at any stage of proceedings on such terms as may be just, there is no quarrel with the proposition that the

amendment was sought at the trial stage and that too without changing the nature of the suit."

5. As will appear from the aforesaid observation that Order 6 Rule 17 has been interpreted by the Hon'ble Supreme Court in various decisions and the Apex Courts has given guide lines for the law courts that the courts while deciding the amendment application should not adopt a hypertechnical view. It has also been emphasized in the aforesaid decision that technicalities of law should not be permitted to hamper the court in administration of justice between the arties. Amendments are allowed in the leadings to avoid uncalled multiplicities of litigation.

6. In ***B.K. Narayana Pllai Vs. Parameshwaran Pillai (2000) 1 SCC 712*** *held as under:*

"3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts whiled deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties.

Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation."

7. "The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But is equally true that eh courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings in order to avoid uncalled for multiplicity of litigation."

13. It is clear from the amendment sought that the same is as a result of subsequent events and as such fresh suit will not be necessary as observed by the apex Court in ***Saraft Vs. Additional District Judge, IIIrd Fast Track Court, Hardwar and others*** *(supra.)*

14. However, in view of the judgment cited above and observations made above, a writ of certiorari is issued quashing the order dated 04.02.2003 (Annexure No. 6 to the writ petition) passed by the respondent no.1.

15. The matter is sent back to the trial Court for expediting the hearing of the suit itself.

16. Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

22.08.2006
Rathour